

HOUSE BILL REPORT

SHB 2519

As Passed House:
February 16, 2016

Title: An act relating to nuisance abatement cost recovery for cities.

Brief Description: Allowing nuisance abatement cost recovery for cities.

Sponsors: House Committee on Local Government (originally sponsored by Representatives McCaslin, Gregerson, Shea, Appleton, Tharinger, Peterson, McBride, Manweller, Stokesbary, Reykdal, Sells, Fitzgibbon, Springer, Kochmar, Orwall, Nealey, Pike, Van De Wege and Stanford).

Brief History:

Committee Activity:

Local Government: 1/27/16, 2/3/16 [DPS];

Finance: 2/5/16, 2/8/16 [DPS(LG)].

Floor Activity:

Passed House: 2/16/16, 76-21.

Brief Summary of Substitute Bill

- Authorizes cities and towns to levy a special assessment against property for the expense of abating a nuisance that threatens health or safety.
- Provides that the special assessment constitutes a lien against property and, after the lien is recorded, up to \$2,000 of the recorded lien is of equal rank with state, county, and municipal taxes.
- Requires a city or town: (a) prior to abatement, to send notice to the property owner that abatement is pending and a special assessment may be levied for the expense; and (b) prior to levying the special assessment, send notice to the property owner and any identifiable mortgage holder stating that a special assessment will be levied and the estimated amount of the assessment.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Appleton, Chair; Gregerson, Vice Chair; Fitzgibbon, McBride, McCaslin, Peterson and Pike.

Minority Report: Do not pass. Signed by 2 members: Representatives Taylor, Ranking Minority Member; Griffey, Assistant Ranking Minority Member.

Staff: Michaela Murdock (786-7289).

HOUSE COMMITTEE ON FINANCE

Majority Report: The substitute bill by Committee on Local Government be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Lytton, Chair; Robinson, Vice Chair; Nealey, Ranking Minority Member; Frame, Manweller, Pollet, Reykdal, Ryu, Springer, Stokesbary, Wilcox and Wylie.

Minority Report: Without recommendation. Signed by 2 members: Representatives Condotta and Vick.

Minority Report: Do not pass. Signed by 1 member: Representative Orcutt, Assistant Ranking Minority Member.

Staff: Sarah McLaughlin Emmans (786-7288).

Background:

"Nuisance" is defined in statute as unlawfully doing an act, or omitting to perform a duty, which:

- annoys, injures, or endangers the comfort, repose, health, or safety of others;
- offends decency;
- unlawfully interferes with, obstructs, or renders dangerous for passage a lake, navigable river, bay, stream, canal, basin, public park, square, street, or highway; or
- in any way renders other persons insecure in life or in the use of property.

A public nuisance is a nuisance that affects equally the rights of an entire community or neighborhood. Statutes further define other types of nuisances and provide civil and criminal remedies and penalties for creating or allowing nuisances.

Authority of Cities and Towns to Declare Nuisances.

All cities and towns are authorized to declare what is deemed a nuisance and to abate the nuisance. Various statutes provide the following:

- First class cities are authorized to declare and define a nuisance, abate any nuisance, and impose fines upon persons creating, continuing, or allowing nuisances.
- Second class cities are authorized to declare and define a nuisance, prevent or abate nuisances at the expense of the party creating or maintaining the nuisance, and levy a special assessment against premises where the nuisance is located to recover abatement costs.

- Code cities are granted by reference the same authority as other cities to declare and define nuisances and to abate nuisances.
- Towns may declare by ordinance what is deemed a nuisance and may exercise all remedies provided by law for preventing and abating nuisances.

Additionally, any city or town may by general ordinance require property owners: (a) to remove all or part of trees or vegetation that have died or that impair the use of sidewalks or streets; and (b) to remove debris on their property that is a fire hazard or menace to public health, safety, or welfare. Cities and towns are authorized to provide for removal of hazardous trees, vegetation, and debris, and to charge the property owner for the cost of removal. The charge is a lien against the property, and may be enforced and foreclosed in the manner provided by law for liens for labor and materials (*i.e.*, mechanics' liens).

Buildings or Premises Unfit for Use or Habitation.

All cities and towns are authorized by statute to adopt ordinances relating to dwellings, buildings, structures, or premises that are unfit for human habitation or other uses due to: dilapidation; disrepair; structural defects; defects increasing the hazards of fire, accidents, or other calamities; inadequate ventilation and uncleanliness; inadequate light or sanitary facilities; inadequate drainage; overcrowding; or other conditions that are inimical to the health and welfare of the community.

Under certain circumstances, a city or town may repair, close, remove, or demolish a dwelling, building, structure, or premises found to be unfit for use or habitation. The amount of the cost to take such action may be assessed against the real property. The assessment constitutes a lien against the property of equal rank with tax liens. If left unpaid, the amount of the assessment may be entered by the county treasurer upon the property tax rolls and collected at the same time as general taxes.

Liens and Lien Priority.

A mechanics' lien is a lien on property for the contract price of labor, professional services, materials, or equipment that was furnished for the improvement of real property. The lien is prior to any lien, mortgage, deed of trust, or other encumbrance that attaches after the mechanics' lien attaches, or that was unrecorded at the time labor, services, materials, or equipment included in the mechanics' lien was first furnished. A mechanics' lien must be recorded not later than 90 days after the person claiming a lien ceases to furnish labor, services, materials, or equipment or the last date that employee benefit contributions were due. From the time that a mechanics' lien is recorded, the lien generally attaches to the property for a period of eight months.

All taxes and levies imposed by the state, a county, or a municipality are liens upon the real and personal property upon which the taxes or levies are imposed or assessed. A state, county, or municipality tax lien has priority to and must be fully paid and satisfied before any other recognizance, mortgage, judgment, debt, obligation, or responsibility.

Collection of Special Assessments.

A local government may contract with the county treasurer for collection of special assessments, excise taxes, rates, or charges imposed by the local government on property. If a contract is entered into, notice of special assessments, excise taxes, rates, or charges may

be: (a) included on the notice of property taxes due; (b) included on a separate notice mailed with the notice of property taxes due; or (c) sent separately from the notice of property taxes due. County treasurers may impose an annual fee for collecting amounts on behalf of local governments, not to exceed 1 percent of the value of the special assessments, excise taxes, rates, or charges collected.

Summary of Substitute Bill:

Cities and towns that exercise authority under various existing statutes or other laws to declare a nuisance, abate a nuisance, or impose fines or costs upon persons who create, continue, or maintain a nuisance are authorized to levy a special assessment on property where a nuisance is situated. The special assessment is for the purpose of reimbursing the city or town for the expense of abatement. Authority granted to cities and towns to levy a special assessment and obtain a lien against property for the expense of nuisance abatement is supplemental to any existing authority to levy an assessment or obtain a lien for costs of abatement.

The special assessment levied by the city or town is a lien, and after it is recorded in the county, up to \$2,000 of the recorded lien is of equal rank with state, county, and municipal taxes. Liens for abatement costs are binding upon successors in title beginning the date they are recorded in the county where the affected real property is located.

Cities and towns that exercise authority to abate a nuisance or levy a special assessment for the costs of abatement must provide prior notice of the action to the property owner. Notices must be sent by regular mail as follows:

- Before a city or town abates a nuisance, notice must be provided to the property owner that: (a) abatement is pending; and (b) a special assessment may be levied on the property.
- Before a special assessment is levied, notice must be provided to the property owner and any identifiable mortgage holder stating: (a) that a special assessment will be levied on the property; and (b) the estimated amount of the special assessment.

Cities and towns levying a special assessment for nuisance abatement may contract with the county treasurer to collect the special assessment in accordance with applicable statute.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Local Government):

(In support) Similar versions of this bill have been worked on and heard by the committee for at least the past four years. The banks are now neutral because the portion of abatement costs that constitutes a lien of equal rank with state, county, and municipal taxes has been capped

at \$2,000, and the rest of the costs will constitute a minor lien. The \$2,000 cap will give financial institutions some surety.

Counties already have the authority granted to cities under this bill, and the amount of a county lien of equal rank with state, county, and municipal taxes is not capped. Cities currently have authority under state law to declare a nuisance, abate a nuisance, and recover costs for abating a nuisance. Currently, abatement costs incurred by cities are only a low level lien, and cities are not able to collect against the lien if there are other, more superior liens on a property.

A rigorous due process approach is followed by cities in going to court to do abatement. For example, cities must: prove that a nuisance exists; obtain a court order for the abatement; conduct abatement; and then go back to court, show the costs of abatement, and get approval to recover the costs. Advance notice is provided to property owners and tenants throughout the process, and cities go to great lengths to work with property owners and avoid abatement. Ultimately, the goal is to have property owners and tenants do the clean up themselves, and going to court is a last resort. The whole nuisance abatement process takes about two years. Cities do not go inside homes, but rather only conduct this type of abatement on the outside of properties.

Nuisances on private property hurt property values and are detrimental to health. Abatement helps property values and neighborhoods, and prevents issues with rats and other vermin. When people move out of homes and leave debris behind, the property may sit empty for years. These properties are dangerous to children and impact surrounding property values.

Cities spend taxpayer funds to provide a private benefit and clean up private properties with nuisances. These taxpayer funds need to be recovered. These are not only small projects, but also major projects (*e.g.*, created by hoarding or other accumulation of debris) that require resources that far exceed \$2,000.

Public nuisances on private property have increasingly become an issue in cities such as the city of SeaTac. Abandoned properties become dumping grounds and affect the neighborhoods. To address these issues, the city first contacts homeowners in an attempt to work with them. The city only takes action if a homeowner is unresponsive. Approximately \$48,000 of city money in SeaTac has been budgeted for nuisance abatement this year. This is money that could otherwise be used for important government services, but instead is needed to clean up private property. These funds need to be recovered.

The current need for nuisance abatement is much greater than funding. Cities cannot keep up with this growing problem. While the \$2,000 priority lien will help cities recover some of the costs of abatement, it will not ensure that all moneys are recovered. Many properties need cleanup well in excess of \$2,000. The \$2,000 amount represents an average amount that cities spend for abatement per project.

(Opposed) For landlords, the problem with controlling or abating nuisances on property occurs when current tenants have created or maintained a nuisance and will not address the issue. Landlords have difficulty addressing nuisances when tenants will not cooperate. The

bill will pass a liability on to landlords and may make it difficult for them to refinance properties. Perhaps some modifications to the language could be made.

(Other) Financial institutions are officially neutral on the bill. Cities have worked with financial institutions over the past two years to ensure that concerns have been addressed. The two main concerns for financial institutions were: (1) the potential liability for financial institutions (*i.e.*, how much would the city's lien for abatement be prior to other liens against the property, including a financial institution's lien); and (2) whether prior notice of the lien would be provided. Those concerns have largely been addressed, although there are still some concerns.

A clarifying amendment is suggested. The bill does not mention the commencement date or the total amount of the lien. Under the language of the bill, it is possible that the lien could be recorded after property is transferred to a purchaser and affect the purchaser without prior notice. A proposed amendment would protect people who purchase property from suddenly discovering and being subject to a lien.

Staff Summary of Public Testimony (Finance):

(In support) The City of Spokane Valley is requesting this bill because of a concern about property values. The city would be conservative in its application of this tool, because the city is already reluctant to begin the abatement process. Cities give lots of prior notice that a nuisance constitutes a health or safety problem. Cities hold themselves to a high standard of due process: even after a city requests a court order, the court must be satisfied that the conditions of the property meet the standard of constituting a risk to health and safety, and then after this point, a property owner still has the chance to clean up the property. Cities will not be making money off of this legislation. They will just use it to try to recover some of the costs, and the bill puts them in more of a priority position to do so (equal to any tax lien, and above mortgage holders). It has taken three years to get stakeholders to agree to this bill. The nuisances in question attract children and vermin and result in a dramatic devaluation of property values in an entire neighborhood. They create health and safety issues. The nuisance abatement process costs taxpayer dollars in the form of dollars lost during foreclosure and bankruptcy processes because of cities having a non-priority lien. This bill gives sureness on the back end of that at least \$2,000 of taxpayer dollars will have some priority to come back. Spokane Valley already has the authority to impose a lien but it is not a priority lien. Counties also currently have this authority, and it is not capped.

(Opposed) None.

(Other) Bankers were concerned with the recording of liens so that others can see that the lien was present, and that there was maximum exposure for others that already had a lien (such as banks). The legislation meets both of those concerns. Working together is important to ensure that the lien system is an important functioning system for all stakeholders. The bankers are neutral on the proposal.

Persons Testifying (Local Government): (In support) Representative McCaslin, prime sponsor; Arne Woodard, Spokane Valley City Council; Peter Kwon, SeaTac City Council; Sam Wood, Spokane Valley City Council; and Cary Driskell, City of Spokane Valley.

(Opposed) Bill Hinkle, Rental Housing Association.

(Other) Brad Tower, Community Bankers of Washington/United Financial Lobby; and Stuart Halsan, Washington Land Title Association.

Persons Testifying (Finance): (In support) Representative McCaslin, prime sponsor; Arnie Woodard, City of Spokane Valley; Carey Driscoll, City of Spokane Valley; and Bill Gotham, City of Spokane Valley.

(Other) Brad Tower, Community Bankers of Washington.

Persons Signed In To Testify But Not Testifying (Local Government): None.

Persons Signed In To Testify But Not Testifying (Finance): None.